April 21, 2004

Secretary Mary Cottrell
Department of Telecommunications and Energy
One South Sation
Boston, MA 02110

RE: Comments of Locals 273, 369 and 654, Utility Workers Union of America
<u>in the following Service Quality Dockets:</u>
Bay State Gas Company, DTE 04-12
Boston Edison Company, DTE 04-15
Cambridge Electric Light Company, DTE 04-17
Commonwealth Electric Company, DTE 04-19
Massachusetts Electric Company, DTE 04-22
NSTAR Gas Company, DTE 04-23

Dear Secretary Cottrell:

These comments are submitted by three Locals of the Utility Workers Union of America ("UWUA") in response to the 2003 Service Quality ("SQ") Reports submitted by the six gas and electric companies listed above. UWUA Local 273 represents approximately 200 workers at Bay State Gas Company. UWUA Local 369 represents approximately 2,600 workers at the four NSTAR companies (Boston Edison Company, Cambridge Electric Company, Commonwealth Electric Company and NSTAR Gas Company). UWUA Local 654 represents approximately 500 workers at Massachusetts Electric Company. Members of these three Locals (collectively, "UWUA Locals") answer customer calls, prepare bills, maintain gas lines, install new meters, work on distribution lines and substations and, more generally, play a vital role in operating and maintaining the gas and electric systems at these companies. The vast majority of these UWUA members have at least a decade of experience on the job. They have first-hand knowledge of what it takes to safely and efficiently operate a utility system. They have seen first-hand how cutbacks in staffing, capital expenditures, inspections and maintenance have affected service quality.

The UWUA Locals begin with some general observations about service quality, before turning to specific issues raised by the SQ Reports filed on March 1, 2004.

The aging workforce:

The utility work force in Massachusetts is aging, with the potential for serious impacts on safety and service quality in the near future. At Local 273, for example, the vast majority of the workers in the distribution department of the Brockton division of Bay State have at least fifteen years of experience; there are no employees with less than ten years experience; and no young trainees are in the pipeline. The last time a new worker was added to the distribution department (other than transfers of experienced employees from other departments) was approximately ten years ago. Approximately one-third of these workers are over the age of 50 and rapidly approaching retirement. The situation at NSTAR and MECo is generally similar, although Bay State probably represents a more extreme example of the aging of the work force. Certainly, current customers benefit by having so many skilled individuals inspecting, maintaining and repairing electric and gas systems, but a high percentage of these workers will be retiring in the next few years with no clear plans for replacement. Even if a company replaces retiring workers, one-for-one, with newly-trained young workers, the quality of the work force will inevitably decline. Electricity and gas each pose serious safety risks for workers and the public. Experience on the job matters. A work force of 100 workers with an average age of 50 is simply more highly skilled and safer than a work force of 100 workers whose average age is 25. To address the problem of an aging work force, **the UWUA Locals recommend that companies annually file statistics on the average age of the work force (or data on the number of workers in various age brackets) and a description of how the company plans to recruit, train and integrate skilled new workers into the work force.** The need for this type of information is particularly acute right now, given the aging of the work force and the pressures that mergers have created to reduce staffing levels and cut back on training and hiring of new workers. The UWUA Locals believe that it is particularly important to report this data for workers directly involved in inspection, maintenance, installation and repairs, but the Department should collect this data for all work categories.

Safety-related reporting:

Safety is a top concern for the UWUA Locals. Members who work on or near electric and gas lines and equipment suffer serious, sometimes fatal injuries. Between 80 and 90 electric and gas workers are killed each years. Many more are injured. Working on electric and gas distribution systems is one of the more dangerous lines of work in this country.[1]

There is an increasing trend for utility companies to use outside contractors for a broad range of inspection, maintenance and repair tasks. To the extent the outside contractor supervises the day-to-day work of its employees, any accident on a utility project would be

[1] Bureau of Labor Statistics, "National Census of Fatal Occupational Injuries in 2002" (Sept. 17, 2003), available at http://www.bls.gov/news.release/pdf/cfoi.pdf.

reported to the Occupational Safety and Health Administration ("OSHA") by the contractor, not by the gas or electric distribution company.[2] The Department would therefore not have any information about these injuries because the current SQ Reports require a company only to report the Lost Time Accident Rate and Restricted Work Day Rate for the company's own direct employees. **The UWUA Locals recommend that the Department require distribution companies to file annually a log of work-related injuries to employees of outside contractors working on the distribution system.** The public's safety can be placed at risk by any accidents occurring on gas and electric systems, whether or not the worker involved is a direct company employee or the employee of an outside contractor. An accidentally downed power line or an a gas line damaged during a repair operation is a safety hazard, whether the involved workers are on the company payroll or employed by outside contractors.[3] While not all injuries to workers place public safety at risk, the Department should have information that would allow it to monitor the year-to-year changes in <u>all</u> work-related injuries, in order to identify problems or trends that may create risks for the public. In the area of transmission line work, for example, outside contractors may be subject to less rigorous standards than direct employees, creating a higher risk of injury to workers or members of the public.[4] By requiring companies to file logs of injuries to workers of outside contractors, the Department will have a much more complete picture of safety-related issues. The UWUA Locals' recommendation is

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[2] However, if the distribution company brings in contract workers and supervises the day-to-day work of those contract workers, the distribution company itself would report any injuries to OSHA.

[3] To choose one notable incident of safety risks connected to the use of outside contractors, the gas explosion that killed two people at George Street in Attleboro in 1998 resulted from the failure of an outside-contractor locator service to properly mark gas lines.

[4] G. L. ch. 149, § 129C requires a second worker to be "at the base of each . . . pole or structure" whenever another worker is handling "live wires [on a pole or structure] in excess of seven hundred and fifty thousand volts" and prohibits the use of "rubber gloves" as sufficient protection for workers handling lines energized "in excess of fifteen thousand volts." Many direct distribution company employees comply with this state standard as an important safety measure. OSHA regulations, however, allow for the use of rubber gloves (29 C.F.R. 1926.950(c)(1)(i)) and do not require a worker on the ground for each worker handling live wires of over 750,000 volts. Due to federal preemption, the outside contractors need only comply with the laxer federal standard. *See Gade v. Nat'l Solid Wastes Mgmt. Ass'n*, 112 S. Ct. 2374, 2383 (1992)("nonapproved state regulation of occupational safety and health issues for which a federal standard is in effect is impliedly preempted as in conflict with the full purposes and objectives of the OSH Act."); *see also* 29 U.S.C. § 667 (describing method by which state may obtain federal approval of stricter state safety standards). The failure to have a second worker on the ground when high-voltage lines are being repaired could pose risks to the public.

consistent with the Department's obligations to "establish service quality standards [for] . . . public and employee safety." G. L. ch. 164, §§ 1E(a), 1F(7).

The process for reviewing SQ Reports:

The UWUA Locals generally agree with the points raised by the Attorney General in his letter dated March 4, 2004 ("RE: Service Quality Standards for Electric Distribution Companies and Local Gas Distribution Companies"). In particular, the UWUA Locals believe that in order for the Department to properly carry out its responsibilities under G. L. ch. 164, §§ 1E(a) and 1F(7), it must do more than allow for the filing of written comments on SQ Reports. Interested parties should be granted reasonable discovery rights and, if necessary, access to company witnesses through cross-examination or other means. As will be noted in the comments below, the SQ Reports raise a number of serious questions that cannot be answered within the four corners of the filed Reports themselves. Answers could only be obtained through some combination of reasonable discovery and access to witnesses.

Staffing levels:

Some of the companies report substantial declines in staffing levels. G. L. ch. 164, §1E(b) places significant restrictions on the ability of companies to reduce staffing levels. Further, current rates for some companies are based on test-year staffing levels much higher than currently prevail, with the possibility that ratepayers are paying more than they should under traditional cost of service principles. The Department should more carefully review reported changes in staffing levels, function by function, and determine whether any reductions in staffing levels either violate the requirements of §1E or affect service quality. In the absence of being granted discovery rights, the UWUA Locals reserve the right to file additional comments on this important issue.

Comments on SQ Reports:

Bay State - Bay State reports that "unaccounted for gas" was 967,263 mcf in 2003, compared to an historic mean of 384,587 mcf. There is no explanation of why the 2003 "unaccounted for gas" is approximately 2.5 times the reported mean. Further, "unaccounted for gas" was ten times higher in 2003 than in 2002, expressed as a percent of all gas. DTE 04-12, Section Two, Page 3. The Department should require a complete explanation from Bay State of why the 2003 number is so high and what, if any, measures are being taken to control loss of gas in 2004. "Unaccounted for gas" translates into lost revenues for the company, and therefore into higher rates for customers. The Department cannot allow such a marked increase in "unaccounted for gas" to go unexamined.

Capital expenditures at Bay State are down significantly by any measure. Total 2003 capital expenditures were $27.63 million, approximately one-third below the reported mean of $39.96 million. Expenditures that Bay State characterizes as "reliability-related" were $8.66 million in 2003, down approximately one-third from the reported mean of $12.38 million. Further, the back-up detail provided by Bay State (DTE 04-12, Section Two, Page 2) shows a long-term trend of declining system investment. During the four year period from 2000 to 2003, Bay State spent between $27.63 and $33.74 million per year on capital expenditures, in then-current (nominal) dollars. In the four years 1993 to 1996, the company spent no less than $35.91 million and as much as $48.51 million on capital expenditures, with an average amount of $41.47 million per year, again in nominal dollars. In 2003 dollars (that is, adjusted for inflation), the 1993 to 1996 annual expenditures would be close to $50 million on average (using the CPI Index - All Urban Consumers to adjust 1993 - 96 expenditures to mid-2003 dollars). Clearly, Bay State's capital expenditures have fallen off a cliff, and the company should be required to explain why.[5] Local 273 has presented the Department with a wealth of information over the past two years that points to a policy of conscious disinvestment as the explanation.[6] The Department should finally, if belatedly, investigate why recent capital expenditures have declined so significantly.

Further, Bay State continues to decimate its work force. The <u>smallest</u> annual work force reduction in the past five years was the 30 position reduction from 2002 (622 positions) to 2003 (592 positions). DTE 04-12, Section Two, Page 4. From 2001 to 2002, the company reduced the work force by 159, or 20% in this one year alone. The staffing cuts had a disastrous effect on the telephone service factor during the first five months of 2003, when the company never answered more than 57.5% of customer calls within 20 seconds, and answered as few as 43.4% in the month of March. DTE 04-12, Section Three, Page 1. Regulators in New Hampshire have imposed substantial fines on Bay State's affiliate, Northern Utilities, for its abysmal record in answering calls.[7]

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[5] The Department should explore whether there is any connection between declining capital expenditures and gas losses, as unrepaired leaks contribute to "unaccounted for gas."

[6] At various times, Local273 has written to the Department about Bay State's dismal "telephone service factor" statistics (letters dated April 16, May 20, and August 13, 2003) and made an in-person presentation on a broad range of service quality issues, including disinvestment in infrastructure, radical cuts in staffing, delays and barriers in customers obtaining new service, closing of walk-in centers, and relatively high level of customer complaints per thousand customers (December 2002). Local 273 will gladly provide the Hearing Officer any or all of these previously filed letters and documents.

[7] Local 273 detailed the actions taken by the New Hampshire PUC in the letters referred to in the previous footnote. Customer calls for Northern Utilities are handled by the Bay State call center in Springfield, Massachusetts.

The Maine Public Utilities Commission recently completed an in-depth audit of Northern Utilities/Bay State, "Management Audit and Investigation of Service Quality Incentive Plan," June 10, 2003, Docket 2002-140 ("Management Audit"). That audit is nothing less than a serious indictment of Bay State's management:

> The [Maine] Commission ordered this investigation in response to the precipitous decline in Northern's service quality performance over the past several years. [The audit considered that] Bay State, an affiliate of Northern and a key provider of its customer services, has undergone significant change in staffing levels, technology and leadership as a result of its acquisition by NiSource in 1998 . . . .
>
> Bay State's management did not appear able to identify and address key issues that negatively impacted Maine customers in a proactive and timely manner. These issues included . . . long hold times to answer credit-related calls; and busy signals at the Contact Center. Instead, management focused resources on addressing issues that had a more direct impact on the bottom-line, such as avoiding service quality penalties put in place by Massachusetts regulators or participating in merger integration initiatives.

Management Audit, Executive Summary, 1-1 to 1-2.

The Management Audit was particularly critical of Bay State's call center staffing and policies:

> "Regulatory incentives and cost-cutting, not customer-driven standards, primarily drove Bay State's Contact Center strategies."

Id., at 7-2.

The UWUA Locals find it very troubling that regulators in the two smaller states of New Hampshire and Maine have taken very strong actions in response to customer service problems emanating from the Bay State call center in Springfield, while this Department has done virtually nothing in response to repeated entreaties from Local 273 that something be done. It is equally troubling that Bay State apparently faces no sanction for its extremely poor call center performance during the first five months of 2003, because the annual average performance barely exceeds the targeted standard. Even its overall average for the year of 70.7% is low compared to other Massachusetts companies.[8] **The UWUA Locals reiterate the request first made by**

[8] For example, Massachusetts Electric reports answering 93.2% of its non-emergency calls within 20 seconds in 2003; Boston Edison reports 76.7%; Cambridge Electric 79.6%; Commonwealth Electric 79.6%; and NSTAR Gas 78.9%.

Local 273 in December 2002 that the Department order a management audit of Bay State, with a focus on the customer call center, capital expenditures and staffing levels.

The UWUA Locals also note that Bay State has the worst "Consumer Division Case" statistics of any of the six companies whose workers the Locals represent. Bay State reports 1.34 Consumer Division Cases ("CDCs") for each 1,000 customers. NSTAR Gas reports half that rate, .644 CDCs per thousand. Similarly, Commonwealth Electric reports just under half Bay State's rate (.593 CDCs per 1,000 customers). Cambridge Electric reports only one-tenth Bay State's rate (.126 CDCs per 1,000 customers). Massachusetts Electric reports a rate of .51,[9] again less than one-half the Bay State rate. The only company whose rate approaches Bay State's is Boston Edison, with a rate of 1.211. The Department should thoroughly investigate the nature and volume of CDCs involving Bay State.

Massachusetts Electric - Regarding Massachusetts Electric, the UWUA Locals are most concerned about the use of outside contractors and the potential for increased safety risks to employees and the public (See "Safety-Related Reporting" above). The Locals reiterate their request for mandated reporting of injuries to workers of outside contractors carrying out tasks for gas or electric companies.

NSTAR Companies - The UWUA Locals note variations in results among the four NSTAR companies that call for further investigation by the Department. For example, Cambridge Electric reports keeping only 83.06% of its service appointments, and Boston Edison only 86.36%, while the other two NSTAR companies (NSTAR Gas and Commonwealth Electric) respectively report keeping 99.76% and 98.42% of their service appointments. The Cambridge Electric and Boston Edison results are also well below those reported by Massachusetts Electric (91.8%) and Bay State (99.3%). Cambridge Electric and Boston Edison should be required to explain why their performance is so much worse than the four other companies just mentioned, and especially why two affiliated NSTAR companies (NSTAR Gas and Commonwealth Electric) do such a better job of keeping appointments.

Similarly, Commonwealth Electric and Boston Edison report line losses of 6.2% and 7.5%, respectively, in each case being higher than the historical "mean" reported by the company for line losses. Massachusetts Electric reports line losses of only 4.79%.[10] The Department

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[9] Massachusetts Electric reports the raw number of 630 total CDCs in 2003, DTE 04-22, Section 1, Page 1 of 2, and separately reports having 1,229,099 customers in 2003 (Section 2, Page 2 of 9), for a CDC rate per 1,000 customers of .51.

[10] Cambridge Electric reports line losses of only 3.4%. However, it is possible that this is due to the fact that much of the company's distribution system is underground, given the density of the City of Cambridge.

should explore why the line losses for Commonwealth Electric and Boston Edison are so high, as losses contribute directly to the companies' revenue requirements. Without having the right of discovery, the UWUA Locals can only suggest that there may be a correlation among staffing levels; inspection, maintenance and repair practices; and line losses.

Conclusions:

To date, the Department has never fully investigated SQ Reports filed by companies. There has been little probing beneath the surface of reported figures, no auditing of actual company performance or reported results, and little in the way of either inter-company comparisons or critical analysis of intra-company performance over time. The UWUA Locals urge the Department to begin taking a much more active and involved approach to service quality, as the Restructuring Act requires. Part of the "grand bargain" made by the several parties involved in the discussions that led up to the Restructuring Act is that companies would be subject to closer scrutiny of their service quality, in exchange for a host of measures that favored the companies, including divestiture of risky generation investments, full recovery of stranded costs and a reduction of the heavy-handed "cost of service" approach to rate regulation. A cursory review of the SQ Reports filed this past March raises a host of questions that the Department should address, as noted in the comments above that are specific to each company. There are also more general matters that the Department should consider in order to insure public safety and service quality, including the aging work force, the increased use of unregulated outside contractors, and reductions in staffing levels. However, unless the Department allows interested parties better access to relevant information — through discovery and, if needed, cross-examination of company witnesses — the Department will not begin to fulfill the service quality obligations that the legislature intended when adopting the Restructuring Act.

The UWUA Locals appreciate the opportunity the Department has offered to file these comments. They look forward to continuing to part of the discussions around service quality issues.

Respectfully submitted,

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